

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.201(i) and 150.801(c). (This is a GIL).

December 5, 2000

Dear Xxxxx:

This letter is in response to your letter dated July 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are a business forms company located in STATE. We have been chosen to supply the printed materials for a company located in Illinois. As part of our agreement with the client, we will drive to the customer's office on a monthly basis for the purpose of taking physical inventory. We would then take that information back to our office in STATE, calculate usage and re-order points, and advise our client of the purchasing decisions needed to be made. All of the items we provide are shipped into Illinois from outside of the state.

- 1- Will we be required to obtain a selling permit from Illinois?
- 2- Will we be required to collect Illinois state sales tax or can we classify this customer as interstate commerce and invoice them as exempt from sales tax?

We assume you are selling stock or standard printed items such as those described in 86 Ill. Adm. Code 130.2000(b)(1). Under the circumstances set out in your letter, we believe you should register with the Illinois Department of Revenue as an out-of-State Use Tax collector and collect and remit Use Tax from your Illinois customers. We reach this determination by applying the following principles to the facts stated in your letter.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. So long as you do not accept purchase orders in Illinois, and so long as the items you sell are not located in Illinois at the time of sale, you need not register as a retailer.

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code Sec. 150.201(i), enclosed), must register to collect Illinois Use Tax

from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.801(c), enclosed. The retailer must collect and remit Use Tax to the State on behalf of his Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The provisions of this regulation are subject to the recent U.S. Supreme Court ruling of Quill v. North Dakota, 112 S. Ct. 1902 (1992), in which the Supreme Court set forth guidelines for determining what nexus requirements must be met before a business is properly subject to a state's tax laws. Quill invoked a two-prong analysis consisting of 1) whether the Due Process Clause is satisfied, and 2) whether the Commerce Clause "substantial nexus" test is met before the state can impose tax collection responsibilities.

The due process test will be met if requiring the retailer to collect state sales tax is fundamentally fair to the retailer. If the retailer intentionally avails itself of the benefits of the taxing state's economic market, then due process is satisfied, Quill at 1910.

Notwithstanding the fact that due process has been met, a business must also have a physical presence in the taxing state in order for the "substantial nexus" test to be met under the Commerce Clause and before a state can impose tax collection responsibilities on an out-of-State retailer. A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative, and it is immaterial for tax purposes that the representative's presence is temporary.

We conclude that the presence of your personnel at your Illinois customer's location on a regular basis to take physical inventory would satisfy the substantial nexus requirement. Therefore we conclude you would be subject to the above described registration and tax collection requirements.

As we noted in our initial paragraph, the above assumes you are selling stock or standard printed items. If the printed items you sell are personalized as described in 86 Ill. Adm. Code 130.1995(b)(1), then the transactions would be subject to tax under the Service Occupation Tax Act. This tax is very complex and is extremely fact dependent. Therefore we cannot advise you about tax consequences unless you were to provide additional information concerning the transactions.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
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Enc.